IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 22 of 2004

1. State of Uttaranchal through
Superintending Engineer,
Lakhwar Construction Circle –I,
Post Box No. 130, Yamuna Bhawan,
Yamuna Colony, Dehradun.

2. Executive Engineer,
Tunnel and Power House Division –II,
Irrigation Bhawan, Dehradun.

…….. Revisionist

Versus

1. M/s New Engineering Enterprises,
B- 18, Industrial Estate, Roorkee,
Prop. Smt. Manju W/o Vijay Kumar,
R/o 40, Civil Lines, Roorkee,
District Haridwar.
2. District and Sessions Judge, Haridwar.

…… Respondent

Mr. Seema Sirohi, Brief Holder for the State.
Mr. Arvind Vashishth, Advocate for the respondent No. 1.

Hon. Prafulla C. Pant, J.

Heard Mrs. Seema Sirohi, learned Brief Holder of the State (revisionists) and Mr. Arvind Vashishth, learned counsel for the respondent No. 1.

2) This revision is directed against the order dated 20.01.2004, passed in Misc. Case No. 240 of 2003 by learned District and Sessions Judge, Haridwar. By said impugned judgment, the court below has allowed the application under Section 05 of the Limitation Act, 1963, imposing cost of Rs. 500/- on the applicant.

3) Brief facts of the case are that an award was filed by the Arbitrator before the civil court, which was rejected on the ground that it was barred by time. Thereafter, a review petition appears to have been filed and after its rejection, a revision No. 35 of 2004 was filed before the District Judge, which was dismissed on 03.03.2003. On this, it appears that the present respondent made efforts to challenge the order in the High Court where he got a legal advice, probably through the counsel, that the order passed by the civil court, which was challenged in revision, was infact an appellable order. On this, the appeal was preferred at a belated stage by the respondent before the District Judge with an application under Section 5 read with Section 14 of the Limitation Act, 1963.

4) Sub-section (1) of Section 14 of the Limitation Act, 1963, reads as under:

> ***"14. Exclusion of time of proceeding bona fide in Court without jurisdi tion.*** **–** *(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a Court of first instance or of appeal or revision, against the relates to the same matter in issue and is prosecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it."*

In view of aforesaid provision the court below found that the revision filed earlier by the present respondent was bonafide and with due diligence. The same appears to be factual satisfaction of the court below, and, in view of the provisions contained in

sub-section (1) of Section 14, quoted above, the impugned order cannot be said to be unjust or against the law.

5) Learned Brief Holder holding brief of the Standing counsel for the revisionists, argued that at the time of the disposal of the review application, the trial court has already observed that the appeal could have been filed against the order. However, it cannot be said that the said fact was not considered by the lower court.

6) In the facts and circumstances of the case, as discussed above, there is no force in the revision and the same is liable to be dismissed. Accordingly, the revision is dismissed at the admission stage, itself.

(Prafulla C. Pant, J.)

Dt. March 08, 2006.
H. Negi